
SENATE BILL 5129

State of Washington

66th Legislature

2019 Regular Session

By Senator Rolfes; by request of Office of Financial Management

Prefiled 01/11/19.

1 AN ACT Relating to increasing revenues for the support of state
2 government; adding new sections to chapter 82.04 RCW; adding a new
3 section to chapter 82.32 RCW; adding a new chapter to Title 82 RCW;
4 providing effective dates; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Part I**

7 **Imposing an Excise Tax on Capital Gains**

8 NEW SECTION. **Sec. 101.** The definitions in this section apply
9 throughout this chapter unless the context clearly requires
10 otherwise.

11 (1) "Accessory dwelling unit" means a separate habitable living
12 area that is subordinate to the principal single-family dwelling
13 unit, which is either internal to, attached to, or located on the
14 same property tax parcel as, the principal single-family dwelling
15 unit.

16 (2) "Adjusted capital gain" means federal net long-term capital
17 gain:

18 (a) Plus any loss from a sale or exchange that is exempt from the
19 tax imposed in this chapter, to the extent such loss was included in
20 calculating federal net long-term capital gain; and

1 (b) Less any gain from a sale or exchange that is exempt from the
2 tax imposed in this chapter, to the extent such gain was included in
3 calculating federal net long-term capital gain.

4 (3) "Capital asset" has the same meaning as provided by Title 26
5 U.S.C. Sec. 1221 of the internal revenue code and also includes any
6 other property if the sale or exchange of the property results in a
7 gain that is treated as a long-term capital gain under Title 26
8 U.S.C. Sec. 1231 or any other provision of the internal revenue code.

9 (4) "Federal net long-term capital gain" means the net long-term
10 capital gain reportable for federal income tax purposes.

11 (5) "Individual" means a natural person.

12 (6) "Internal revenue code" means the United States internal
13 revenue code of 1986, as amended, as of the effective date of this
14 section, or such subsequent date as the department may provide by
15 rule consistent with the purpose of this chapter.

16 (7) "Long-term capital asset" means a capital asset that is held
17 for more than one year.

18 (8)(a) "Resident" means an individual:

19 (i) Who is domiciled in this state during the taxable year,
20 unless the individual (A) maintained no permanent place of abode in
21 this state during the entire taxable year, (B) maintained a permanent
22 place of abode outside of this state during the entire taxable year,
23 and (C) spent in the aggregate not more than thirty days of the
24 taxable year in this state; or

25 (ii) Who is not domiciled in this state during the taxable year
26 but maintained a place of abode and was physically present in this
27 state for more than one hundred eighty-three days during the taxable
28 year.

29 (b) For purposes of this subsection, "day" includes any portion
30 of a day, except that a continuous period of twenty-four hours or
31 less may not constitute more than one day.

32 (c) An individual who is a resident under (a) of this subsection
33 is a resident for that portion of a taxable year in which the
34 individual was domiciled in this state or maintained a place of abode
35 in this state.

36 (9) "Taxable year" means the taxpayer's taxable year as
37 determined under the internal revenue code.

38 (10) "Taxpayer" means an individual subject to tax under this
39 chapter.

1 (11) "Washington capital gains" means an individual's adjusted
2 capital gains allocated to this state as provided in section 106 of
3 this act, less:

4 (a) Twenty-five thousand dollars; or

5 (b) Fifty thousand dollars for individuals filing joint returns
6 under this chapter.

7 NEW SECTION. **Sec. 102.** (1) Beginning January 1, 2020, a tax is
8 imposed on all individuals for the privilege of selling or exchanging
9 long-term capital assets, or receiving Washington capital gains. The
10 tax equals nine percent multiplied by the individual's Washington
11 capital gains.

12 (2) If an individual's Washington capital gains are less than
13 zero for a taxable year, no tax is due under this section. No such
14 losses may be carried back or carried forward to another taxable
15 year.

16 (3) (a) The tax imposed in this section applies to (i) the sale or
17 exchange of long-term capital assets owned by the taxpayer, whether
18 the taxpayer was the legal or a beneficial owner of such assets at
19 the time of the sale or exchange, or (ii) Washington capital gains
20 otherwise realized by the taxpayer.

21 (b) For purposes of this chapter, an individual is a beneficial
22 owner of long-term capital assets held by an entity that is a pass-
23 through or disregarded entity for federal tax purposes, such as a
24 partnership, limited liability company, S corporation, or trust, to
25 the extent of the individual's ownership interest in the entity as
26 reported for federal income tax purposes.

27 NEW SECTION. **Sec. 103.** This chapter does not apply to the sale
28 or exchange of:

29 (1) Any residential dwelling along with the land upon which the
30 dwelling is located. For the purposes of this subsection (1),
31 "residential dwelling" means property consisting solely of (a) a
32 single-family residence, a residential condominium unit, or a
33 residential cooperative unit, including any accessory dwelling unit
34 associated with such residence or residential unit, (b) a multifamily
35 residential building consisting of one or more common walls and fewer
36 than four units, or (c) a floating home as defined in RCW 82.45.032;

37 (2) Assets held under a retirement savings account under Title 26
38 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered

1 annuity or custodial account described in Title 26 U.S.C. Sec. 403(b)
2 of the internal revenue code, a deferred compensation plan under
3 Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an
4 individual retirement account or individual retirement annuity
5 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a
6 Roth individual retirement account described in Title 26 U.S.C. Sec.
7 408A of the internal revenue code, an employee defined contribution
8 program, an employee defined benefit plan, or a similar retirement
9 savings vehicle;

10 (3) Assets pursuant to or under imminent threat of condemnation
11 proceedings by the United States, the state or any of its political
12 subdivisions, or a municipal corporation;

13 (4) Cattle, horses, or breeding livestock held for more than
14 twelve months if for the taxable year of the sale or exchange, more
15 than fifty percent of the taxpayer's gross income for the taxable
16 year, including from the sale or exchange of capital assets, is from
17 farming or ranching;

18 (5) Agricultural land by an individual who has regular,
19 continuous, and substantial involvement in the operation of the
20 agriculture that meets the criteria for material participation in an
21 activity under Title 26 U.S.C. Sec. 469(h) of the internal revenue
22 code for the ten years prior to the date of the sale or exchange of
23 the agricultural land;

24 (6) Property used in a trade or business if the property
25 qualifies for an income tax deduction under Title 26 U.S.C. Sec. 167
26 or 179 of the internal revenue code; and

27 (7) Timber, timberland, or the receipt of Washington capital
28 gains as dividends and distributions from real estate investment
29 trusts derived from gains from the sale or exchange of timber or
30 timberland. "Timber" means forest trees, standing or down, on
31 privately or publicly owned land, and includes Christmas trees and
32 short-rotation hardwoods. The sale or exchange of timber includes the
33 cutting or disposal of timber qualifying for capital gains treatment
34 under Title 26 U.S.C. Sec. 631(a) or (b) of the internal revenue
35 code.

36 NEW SECTION. **Sec. 104.** The tax imposed under this chapter is in
37 addition to any other taxes imposed by the state or any of its
38 political subdivisions, or a municipal corporation, with respect to
39 the same sale or exchange, including the taxes imposed in or under

1 the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46
2 RCW.

3 NEW SECTION. **Sec. 105.** In computing tax, there may be deducted
4 from the measure of tax amounts that the state is prohibited from
5 taxing under the Constitution of this state or the Constitution or
6 laws of the United States.

7 NEW SECTION. **Sec. 106.** (1) For purposes of the tax imposed
8 under this chapter, adjusted capital gains are allocated as follows:

9 (a) Adjusted capital gains from the sale or exchange of real
10 property are allocated to this state if the real property is located
11 in this state or a majority of the fair market value of the real
12 property is located in this state.

13 (b) Adjusted capital gains from the sale or exchange of tangible
14 personal property are allocated to this state if the property was
15 located in this state at the time of the sale or exchange. Adjusted
16 capital gains from the sale or exchange of tangible personal property
17 are also allocated to this state even though the property was not
18 located in this state at the time of the sale or exchange if:

19 (i) The property was located in the state at any time during the
20 taxable year in which the sale or exchange occurred or the
21 immediately preceding taxable year;

22 (ii) The taxpayer was a resident at the time the sale or exchange
23 occurred; and

24 (iii) The taxpayer is not subject to the payment of an income or
25 excise tax legally imposed on the adjusted capital gain by another
26 taxing jurisdiction.

27 (c) Adjusted capital gains derived from intangible personal
28 property are allocated to this state if the taxpayer was domiciled in
29 this state at the time the sale or exchange occurred.

30 (2)(a) A credit is allowed against the tax imposed in section 102
31 of this act equal to the amount of any legally imposed income or
32 excise tax paid by the taxpayer to another taxing jurisdiction on
33 capital gains derived from capital assets within the other taxing
34 jurisdiction to the extent such capital gains are included in the
35 taxpayer's Washington capital gains. The amount of credit under this
36 subsection may not exceed the total amount of tax due under this
37 chapter, and there is no carryback or carryforward of any unused
38 credits.

1 (b) As used in this section, "taxing jurisdiction" means a state
2 of the United States other than the state of Washington, the District
3 of Columbia, the Commonwealth of Puerto Rico, any territory or
4 possession of the United States, or any foreign country or political
5 subdivision of a foreign country.

6 NEW SECTION. **Sec. 107.** (1) Except as otherwise provided in this
7 section or RCW 82.32.080, taxpayers owing tax under this chapter must
8 file, on forms prescribed by the department, a return with the
9 department on or before the date the taxpayer's federal income tax
10 return for the taxable year is required to be filed.

11 (2) In addition to the Washington return required to be filed
12 under subsection (1) of this section, taxpayers owing tax under this
13 chapter must file with the department on or before the date the
14 federal return is required to be filed a copy of the federal income
15 tax return along with all schedules and supporting documentation.

16 (3) Each taxpayer required to file a return under this section
17 must, without assessment, notice, or demand, pay any tax due thereon
18 to the department on or before the date fixed for the filing of the
19 return, regardless of any filing extension. If any tax due under this
20 chapter is not paid by the due date, interest and penalties as
21 provided in chapter 82.32 RCW apply to the deficiency.

22 (4) The department may by rule require that certain individuals
23 and other persons file, at times and on forms prescribed by the
24 department, informational returns for any period.

25 (5) If a taxpayer has obtained an extension of time for filing
26 the federal income tax return for the taxable year, the taxpayer is
27 entitled to the same extension of time for filing the return required
28 under this section if the taxpayer provides the department, before
29 the due date provided in subsection (1) of this section, the
30 extension confirmation number or other evidence satisfactory to the
31 department confirming the federal extension. An extension under this
32 subsection for the filing of a return under this chapter is not an
33 extension of time to pay the tax due under this chapter.

34 (6) (a) If any return due under subsection (1) of this section,
35 along with a copy of the federal income tax return, is not filed with
36 the department by the due date or any extension granted by the
37 department, the department must assess a penalty in the amount of
38 five percent of the tax due for the taxable year covered by the
39 return for each month or portion of a month that the return remains

1 unfiled. The total penalty assessed under this subsection may not
2 exceed twenty-five percent of the tax due for the taxable year
3 covered by the delinquent return. The penalty under this subsection
4 is in addition to any penalties assessed for the late payment of any
5 tax due on the return.

6 (b) The department must waive or cancel the penalty imposed under
7 this subsection if:

8 (i) The department is persuaded that the taxpayer's failure to
9 file the return by the due date was due to circumstances beyond the
10 taxpayer's control; or

11 (ii) The taxpayer has not been delinquent in filing any return
12 due under this section during the preceding five calendar years.

13 NEW SECTION. **Sec. 108.** (1) If the federal income tax
14 liabilities of both spouses are determined on a joint federal return
15 for the taxable year, they must file a joint return under this
16 chapter.

17 (2) Except as otherwise provided in this subsection, if the
18 federal income tax liability of either spouse is determined on a
19 separate federal return for the taxable year, they must file separate
20 returns under this chapter. State registered domestic partners may
21 file a joint return under this chapter even if they filed separate
22 federal returns for the taxable year.

23 (3) In any case in which a joint return is filed under this
24 section, the liability of each spouse or state registered domestic
25 partner is joint and several, unless:

26 (a) The spouse is relieved of liability for federal tax purposes
27 as provided under Title 26 U.S.C. Sec. 6015 of the internal revenue
28 code; or

29 (b) The department determines that the domestic partner qualifies
30 for relief as provided by rule of the department. Such rule, to the
31 extent possible without being inconsistent with this chapter, must
32 follow Title 26 U.S.C. Sec. 6015.

33 NEW SECTION. **Sec. 109.** To the extent not inconsistent with the
34 provisions of this chapter, the following statutes apply to the
35 administration of taxes imposed under this chapter: RCW 82.32.050,
36 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,
37 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,
38 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,

1 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,
2 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,
3 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410,
4 82.32.805, 82.32.808, and section 113 of this act.

5 NEW SECTION. **Sec. 110.** (1) Any taxpayer who knowingly attempts
6 to evade payment of the tax imposed under this chapter is guilty of a
7 class C felony as provided in chapter 9A.20 RCW.

8 (2) Any taxpayer who knowingly fails to pay tax, make returns,
9 keep records, or supply information, as required under this title, is
10 guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

11 NEW SECTION. **Sec. 111.** Notwithstanding any common law rule of
12 strict construction of statutes imposing taxes, this chapter, being
13 necessary for the welfare of the state and its inhabitants, must be
14 liberally construed in support of application of the tax.

15 NEW SECTION. **Sec. 112.** A new section is added to chapter 82.04
16 RCW to read as follows:

17 A deduction is allowed against a person's gross income of the
18 business to the extent necessary to avoid taxing the same amounts
19 under this chapter and section 102 of this act.

20 NEW SECTION. **Sec. 113.** A new section is added to chapter 82.32
21 RCW to read as follows:

22 (1) The department may enter into reciprocal tax collection
23 agreements with the taxing officials of any other state imposing a
24 specified tax. Agreements authorized under this section must require
25 each state to offset delinquent specified taxes owed by a taxpayer to
26 one party to the agreement, including any associated penalties,
27 interest, or other additions, against refunds of overpaid specified
28 taxes owed to the taxpayer by the other party to the agreement. Such
29 agreements may also include provisions governing the sharing of
30 information relevant to the administration of specified taxes.
31 However, the department may not share return or tax information with
32 other states except as allowed under RCW 82.32.330. Likewise, the
33 department may not share federal tax information with other states
34 without the express written consent of the internal revenue service.

35 (2) The definitions in this subsection apply throughout this
36 section unless the context clearly requires otherwise.

1 (a) "Specified taxes" means generally applicable state and local
2 sales taxes and use taxes, broad-based state gross receipts taxes,
3 state income taxes, and stand-alone state taxes on capital gains or
4 interest and dividends. "Specified taxes" include, but are not
5 limited to, the taxes imposed in or under the authority of chapters
6 82.04, 82.08, 82.12, 82.14, 82.16, and 82.--- RCW (the new chapter
7 created in section 301 of this act), and similar taxes imposed by
8 another state. For purposes of this subsection (2)(a), "gross
9 receipts tax," "income tax," "sales tax," and "use tax" have the same
10 meanings as provided in RCW 82.56.010.

11 (b) "State" has the same meaning as provided in RCW 82.56.010.

12 NEW SECTION. **Sec. 114.** All revenue from taxes collected under
13 this chapter, including penalties and interest on such taxes, must be
14 deposited into the general fund of the state.

15 **Part II**

16 **Increasing the Business and Occupation Tax Rate on Certain Services**

17 NEW SECTION. **Sec. 201.** A new section is added to chapter 82.04
18 RCW to read as follows:

19 (1) Beginning July 1, 2019, an additional rate of tax of 1.0
20 percent is added to the rate provided for in RCW 82.04.255,
21 82.04.285, and 82.04.290(2)(a).

22 (2)(a) The additional rate in subsection (1) of this section does
23 not apply to persons engaging within this state in business as a
24 hospital. "Hospital" has the meaning provided in chapter 70.41 RCW
25 but also includes any hospital that comes within the scope of chapter
26 71.12 RCW if the hospital is also licensed under chapter 70.41 RCW.

27 (b) The additional rate in subsection (1) of this section does
28 not apply to amounts received from performing scientific research and
29 development services including but not limited to research and
30 development in the physical, engineering, and life sciences (such as
31 agriculture, bacteriological, biotechnology, chemical, life sciences,
32 and physical science research and development laboratories or
33 services).

34 (3) Revenues received from the additional rate in this section
35 must be deposited as follows:

36 (a) Eighty percent must be deposited into the education legacy
37 trust account created under RCW 83.100.230; and

1 (b) Twenty percent must be deposited into the general fund.

2 **Part III**

3 **Miscellaneous**

4 NEW SECTION. **Sec. 301.** Sections 101 through 111, 114, and 303
5 of this act constitute a new chapter in Title 82 RCW.

6 NEW SECTION. **Sec. 302.** The provisions of RCW 82.32.805 and
7 82.32.808 do not apply to this act.

8 NEW SECTION. **Sec. 303.** Part I of this act takes effect January
9 1, 2020.

10 NEW SECTION. **Sec. 304.** Part II of this act is necessary for the
11 immediate preservation of the public peace, health, or safety, or
12 support of the state government and its existing public institutions,
13 and takes effect July 1, 2019.

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